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February 15, 1991

RECEIVED ST LOUIS

Steven Siegel
Assistant Regional Counsel
U.S. Environmental Protection Agency
SCS-TUB-3
220 South Dearborn
Chicago, Illinois 60604

EPA Region 5 Records Ctr.



257795

Re: Carve-Out Language

Dear Mr. Siegel:

Below is the language we discussed pertaining to the Carve Out proposal. We are working up a more complete framework which embodies both this language and the Decree which will be delivered to you tomorrow. It might make more sense to simply incorporate these changes into the Decree, rather than use the addendum format.

There may need to be some additional language or changes, but the attached certainly gets you what we discussed. Exhibits B and C can be worked out as part of our additional discussion. We have given you our proposed Exhibit A, which may need some additional clarification. We can do this on Tuesday, if necessary.

All of the above and the enclosure is intended for you to put something together for your management. We have not had a chance to review this with our various managements or with many of the PRPs.

The paragraphs that are numbered are intended to allow you to follow paragraph references in the various clauses.

Very truly yours,

Joseph G. Nassif

JGN/CN/65446-100
Enclosure

REVISIONS
TO CONSENT DECREE

ANGES -

Whereas the Settling PRPs are agreeable to implementing a portion of the Scope of Work ("SOW") adopted by U.S. EPA in the ROD as set forth in Appendix 2 to this Decree, said portion hereafter referred to as the "Customer Portion"; and

Whereas the Settling PRPs have made a good faith offer in response to the outstanding unilateral administrative order issued by the U.S. EPA under §106 of CERCLA;

- CHANGE TO PURPOSE SECTION -

The purpose of this Decree is to set forth the terms and conditions under which the Settling PRPs can satisfy their obligations under this Decree by performing the Customer Portion of the Scope of Work ("SOW") for the Facility, to remove the Settling PRPs from the provisions of the November 22, 1990, Unilateral Administrative Order issued by the U.S. Environmental Protection Agency ("U.S. EPA") under Section 106 of CERCLA, and, to assure that the Settling PRPs are adequately protected in light of their undertaking to perform the Customer Portion of the SOW.

- ADDITIONAL DEFINITIONS -

"Oversight Costs" means any direct costs not inconsistent with the National Contingency Plan, actually incurred and paid by the U.S. EPA and the State of Illinois, in monitoring the compliance of the Settling PRPs with this Decree, including but

not to contractor costs, ^{no way} sampling and laboratory costs, and but excluding indirect costs and any and all interest that accrues prior to the time that this decree is entered.

"Settling PRPs" means the persons, entities, or companies who become parties to the provisions of the Decree within sixty (60) days of the documents being filed with the Court, but does not include Owner Settling PRPs as defined in the Decree.

- CHANGES TO GENERAL PROVISIONS -

2. Commitment of Settling PRPs to Perform SOW.

a. Settling PRPs agree jointly and severally to finance and perform the work as defined in Exhibit A, which reflects 35% of the costs of the work contemplated under the SOW, and to commence said work at the time the Decree is filed with the Court. The commitment of the Settling PRPs to perform the work set forth in Exhibit A shall be null and void in the event that the owner/operator defendants become parties to this Decree and Addendum within the sixty (60) day period as set forth in paragraph 5. Following completion of the RD, certain modifications of the work to be performed by Settling PRPs may be required. Settling PRPs shall revise Exhibit A, if necessary, following completion of the RD, consistent with the provisions of this Decree, and subject to the agreement of the U.S. EPA. In no event shall the work performed by Settling PRPs exceed 35% of the SOW. Any modification to Exhibit A shall be mutually agreed to by the parties. The Unilateral Administrative Order relating to this Facility is modified as

to any Settling PRPs who are hereby removed from the scope and authority of the Order.

b. Consistent with the provisions set forth in Section X (Site Access) and Section XIII (Force Majeure) of the Decree, if access to the Facility or other areas where work is to be performed hereunder is not obtained, despite the best efforts of the Settling PRPs, the United States will thereafter assist the Settling PRPs in obtaining access, to the extent necessary, to perform the work. The United States' costs in this effort and any compensation paid to the property owner shall be considered costs of response, but shall not be reimbursed by Settling PRPs to the extent these costs relate to access to property controlled by the owner/operator defendants.

CHANGE TO: Computation of Time.

Any deadlines pertaining to implementation of the Customer Portion of the SOW are set forth in Exhibit B.

CHANGE TO: Conveyance of the Facility and Institutional Controls.

Paragraph 9 of the Decree, including all subparts thereof, is neither binding nor applicable to the Settling PRPs.

REVISIONS RE: Participation.

The parties agree that upon the filing of the Decree with the Court, all potentially responsible parties ("PRPs") with respect to this Facility will have a period of sixty (60) days

of Completion of the Customer Portion of the Work and a final report which summarizes the work done, any modification made to the SOW or Work Plan(s) thereunder relating to the cleanup and Performance Standards, and data demonstrating that the Cleanup and Performance Standards have been achieved.

b. Certification. Upon receipt of the Notice of Completion, U.S. EPA shall review the final report and supporting documentation, and the remedial actions taken. U.S. EPA, in consultation with the State, shall issue a Certification of Completion upon a determination that Settling PRPs have completed the work set forth in Exhibit A and demonstrated compliance with Cleanup and Performance Standards, and that no further corrective action is required by the Settling PRPs.

REVISION: MODIFICATION OF THE ROD OR SOW

8. Once the RD is complete and the final version of Exhibit A has been agreed upon by the parties, the Settling PRPs will have no responsibility or liability for any additions or changes to the ROD or SOW, subject only to the reopener provision contained in this Addendum.

9. Any change or modifications to the ROD or SOW which reduces the overall cost of the Remedial Action taking place at the Facility shall cause a commensurate reduction in the Customer Portion of the Work as set forth in Exhibit A. Should this adjustment not be possible, either in whole or part, at the time of the change or modification, then the Settling PRPs

shall be entitled to reimbursement from the non-settling PRPs, consistent with the terms and conditions of this Addendum.

VI. STIPULATED PENALTIES, REIMBURSEMENT, AND PREMIUMS

10. Penalties for Settling and Non-Settling PRPs.

a. Section XVII and all paragraphs thereunder of this Decree are replaced by Exhibits A and B. Exhibit B sets forth any and all penalties to be incurred in the event of untimely performance by the Settling PRPs.

b. Any PRP who signs this Decree or otherwise settles with the U.S. EPA after the sixty day period, is subject to the provisions of this subparagraph (b). Such settlement or execution shall be conditioned on the payment by that PRP of its volumetric share of the Customer Portion of the Work, plus interest to date on any unpaid portion due and owing, and, a premium. All PRPs subject to this subparagraph (b) shall pay the premium as calculated in Exhibit C, which premium shall be based upon a percentage of the orphan share of the Customer Portion of the Work. All moneys collected pursuant to this subparagraph (b) shall go to the Settling PRPs.

c. Nothing herein shall be deemed in any way to limit, bar, or restrict any claim, defense, action, penalty, or remedy whatsoever which the U.S. EPA, the State, or the Settling PRPs may have against any person not a party to the agreement.

d. As to the Settling PRPs, natural resources damages shall be considered a covered matter, under paragraph 66 of the Consent Decree.

VII. FINANCIAL RESPONSIBILITY AND DEMINIMUS DEFENDANTS

11. Settling PRPs shall provide financial security, in the amount of \$10,000,000 in one of the forms permitted under 40 C.F.R. 264.145, to assure completion of the Customer Portion of the Work at the Facility. Other than penalties recovered by the U.S. EPA or the State, any and all moneys collected from non-owner/operator PRPs shall be applied to the Customer Portion of the Work at the Facility.

12. The U.S. EPA agrees to assist the Settling PRPs in securing participation in the Customer Portion of the Work from those PRPs who did not receive the §106 order.

VIII. FAILING OWNER/OPERATOR DEFENDANTS

13. To the extent that the owner/operator defendants or their successors are discharged in a proceeding under the U.S. bankruptcy laws for their liability under CERCLA for the Facility, and there is no other entity or corporation, pursuant to either federal or state law, responsible for their portion of the work, as a result of any theories of succession, EPA reserves the right to seek from the Settling PRPs performance of such work.

Carve-out

• If the RD cost estimate is \leq or \geq 10% of the \$ 28.4 million value, work may be added to or deleted from the above units to maintain a 35% generator carve-out